

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**RAMON MONTENEGRO,**

**Plaintiff,**

**vs.**

**No. CV 09-095 WDS**

**MICHAEL J. ASTRUE,  
Commissioner of Social Security,**

**Defendant.**

**AGREED ORDER AWARDING ATTORNEY FEES UNDER EAJA**

THIS MATTER having come before the Court upon Plaintiff's Motion for Attorney Fees under Equal Access to Justice Act (Doc. No. 20, and Defendant having no objection to the Motion (Response, Doc. No. 21), the Court FINDS that the Motion for Attorney Fees should be granted.

IT IS THEREFORE ORDERED that attorney fees be, and hereby are, awarded under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), payable to Plaintiff in the amount of \$4,675.95. *See Astrue v. Ratliff*, 130 U.S. 2521 (2010) (EAJA fees are paid to the prevailing party, not the attorney).

IT IS FURTHER ORDERED THAT, if Plaintiff's counsel receives attorney fees under both the EAJA and 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's counsel

shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

DATED this 29th day of November 2010.



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W. Daniel Schneider  
United States Magistrate Judge

SUBMITTED BY:

s/ Francesca J. MacDowell  
FRANCESCA MacDOWELL  
Attorney for Plaintiff

agreed to by email  
MANUEL LUCERO  
Assistant United States Attorney  
Attorney for Defendant